

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal Nos.1790 and 1811 of 2017

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Both these appeals are preferred by the Union of India against the common order passed by the Learned Single Judge in W.P.Nos.20896 and 23946 of 2017 dated 20.10.2017. It is they who filed both the Writ Petitions challenging the respective judgments and decrees passed by the II Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad in LAOP.No.100 of 2011 dated 09.02.2016 and by the Special Sessions Judge for trial of Cases under the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad in LAOP.No.1123 of 2010 dated 06.02.2017.

The case of the appellant-writ petitioners, in short, is that they were not put on notice by the reference courts before the awards were passed under Section 26 of the Land Acquisition Act, 1894 (for short "the Act"), and therefore the awards passed by the reference Court must be set aside.

In the order under appeal, the Learned Single Judge examined the questions whether it was obligatory for the Civil Court to issue a notice to the beneficiaries, of the land acquisition, in a reference made at the instance of the land owners dissatisfied with the award of the Land Acquisition Officer; and whether the writ petitions, challenging the judgments of the reference courts, were maintainable. The Learned Single Judge noted that the appellant-writ petitioners were not put on notice and, on that ground, the validity of the awards were under challenge.

After referring to Sections 18 to 21 of the Act, to the Constitution Bench judgment of the Supreme Court in **U.P.Awas Evam Vikas Parishad v. Gyan Devi (Dead) by LRs**¹, and to several other judgments, the Learned Single Judge held that the law declared by the Supreme Court, in **U.P.Awas Evam Vikas Parishad**¹, was that the beneficiary had a right to appear in the acquisition proceedings before the Collector, and the reference court, and to adduce evidence for the purpose of determining the amount of compensation; the said right carried with it the right to be given adequate notice by the Collector, as well as the reference court; the beneficiary cannot, however, seek a reference on its own; it could challenge the award of the Collector or the judgment of the Reference Court in proceedings under Article 226 of the Constitution of India, and avail their remedies under the Land Acquisition Act; it was open to them to challenge the award, in proceedings under Article 226 of the Constitution of India, on grounds on which judicial review is permissible; the beneficiary was a proper party; in case of enhancement of compensation by the reference court, if the Government does not file an appeal, the beneficiary could file an appeal, against the judgment of the Civil Court, before the High court after obtaining its leave; and, in the light of the law declared by the Constitution Bench of the Supreme Court, in **U.P.Awas Evam Vikas Parishad**¹, the Writ Petition, under Article 226 of the Constitution of India, was maintainable.

The Learned Single Judge then observed that proceedings, under Article 226 of the Constitution of India, were limited to the grounds available for judicial review; an appeal under Section 54 of the Act enabled the appellate Court to go through the evidence adduced before the Civil Court, or available with it, in the light of the evidence already adduced, and to examine whether enhancement of compensation was

¹ (1995) 2 SCC 326

proper or not; and the alternative remedy, and the scope of enquiry in the appeal, was much wider than the discretionary remedy under Article 226 of the Constitution of India. The Writ Petitions were dismissed giving liberty to the appellant-writ petitioners to avail the remedy of an appeal under Section 54 of the Act, making it clear that the time spent in the writ proceedings could be exempted for condoning the delay, if any.

Sri K. Lakshman, learned Assistant Solicitor General appearing on behalf of the appellant-writ petitioners, would submit that, as no notice was issued by the reference court to the appellant-writ petitioners who are, admittedly, beneficiaries under the land acquisition proceedings, they have been denied the opportunity of not only adducing evidence on their behalf, but also to cross-examine the claimants' witnesses; the remedy of an appeal is neither effective nor efficacious, as it is only, in limited circumstances, would additional evidence be permitted to be adduced; in any event, the appellant-writ petitioners would be deprived of their right to cross-examine the witnesses, which they would have if notice had been issued to them, by the reference court, during the pendency of reference proceedings; and denial of their valuable right to cross-examine witnesses, who adduced evidence on behalf of the claimant-land owners, would cause them irretrievable prejudice, as they are now required to pay the enhanced compensation, as determined under the awards passed by the reference courts in terms of Section 26 of the Act.

Sri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the respondents, would draw our attention to the notice, said to have been issued by the Special Deputy Collector (Land Acquisition) to the 3rd appellant on 19.04.2014, calling upon the appellant-writ petitioners to implead themselves in the LAOPs pending before the Reference Courts. Learned Senior Counsel would contend that, despite having received the

notice from the Land Acquisition Officer, as early as on 19.04.2014, the appellant-writ petitioners had chosen not to implead themselves in the proceedings before the reference courts; and, having failed to do so, it was not open to them to now contend that they were not put on notice, they were denied the opportunity of adducing evidence on their behalf, and to cross-examine witnesses who appeared on behalf of the claimant-land owners; the Learned Single Judge was, in fact, indulgent in condoning the delay, to the extent of the time spent before this Court, in preferring an appeal under Section 54 of the Act; the discretion exercised by the Learned Single Judge, in relegating the appellant-writ petitioners to the alternative remedy of an appeal under Section 54 of the Act, does not suffer from a patent illegality necessitating interference in an intra-court appeal under Clause 15 of the Letters Patent; and no objection would be raised by the claimant-land owners, in case the appellant-writ petitioners are willing to adduce evidence in an appeal filed under Section 54 of the Act.

On the question whether the Land Acquisition Officer had, by their letter dated 19.04.2014, put the appellant-writ petitioners on notice of the pendency of land acquisition proceedings, Sri K. Lakshman, learned Assistant Solicitor General, would submit that, since this plea was raised for the first time in the counter-affidavit filed before the Learned Single Judge, the appellants did not have the opportunity to rebut the same by way of a reply affidavit; in any event, the Learned Single Judge did not non-suit the appellant-writ petitioners on the ground that they were put on notice by the Land Acquisition Officer by his letter dated 19.04.2014; and the Learned Single Judge erred in relegating the appellant-writ petitioners to the remedy of preferring an appeal under Section 54 of the Act, as their valuable right to adduce evidence on their behalf, and to

cross-examine witnesses who had adduced evidence, on behalf of the claimant-land owners before the reference courts, was denied to them.

The Learned Single Judge has, in the order under appeal, held in favour of the appellant-writ petitioners on both points 1 and 2 viz, that it is obligatory on the part of the Civil Court to issue a notice to the beneficiaries of the land acquisition when a reference is made to the Civil Court at the instance of the land owners; and that a writ petition is maintainable against the award passed by the reference Court. While it is no doubt true that, in the light of the law declared by the Supreme Court in **U.P.Awas Evam Vikas Parishad¹**, the scope of interference in proceedings under Article 226 of the Constitution of India is extremely limited, and the parameters of judicial review would apply in considering whether interfere, with an award passed under Section 26 of the Act, is justified, this Court, in the exercise of its powers of judicial review under Article 226 of the Constitution of India, would entertain a Writ Petition, among others, on the ground of violation of principles of natural justice (**Whirlpool Corporation vs. Registrar of Trademarks, Mumbai²**).

If, as is now contended before us, the appellant-writ petitioners were not put on notice, and were unaware of the proceedings before the reference courts, then such failure would be in violation of principles of natural justice necessitating the awards, passed under Section 26 of the Act, being set aside on this short ground for, on a notice being issued by the reference courts, the appellant-writ petitioners could have impleaded themselves in the proceedings before the reference court. While the reference courts have not put the appellant-writ petitioners on notice of pendency of proceedings before them, the Special Deputy Collector appears to have requested the 3rd appellant, by his the letter dated 19.04.2014 to implead themselves in the case to protect the interests of

² (1998) 8 SCC 1

the Government. If the said letter of the Land Acquisition Officer had been received by them, the appellant-writ petitioners may not be justified in contending that the reference courts had erred in not putting them on notice as, on their being made aware of the proceedings before the reference courts, the appellant-writ petitioners ought to have impleaded themselves in the said proceedings.

Sri K. Lakshman, learned Assistant Solicitor General, would, however, submit that the 3rd appellant has not received the said notice from the Land Acquisition Officer; and, if the appellant-writ petitioners had been given an opportunity to file their reply, they would have brought this fact to the notice of the Learned Single Judge. While the appellant-writ petitioners have not denied receipt of the letter dated 19.04.2014 from the Land Acquisition Officer, in the affidavits filed in these Writ Appeals also, the fact remains that the Learned Single Judge has also not held against the appellant-writ petitioners on this score. The order under appeal does not deal with the question whether or not the appellant-writ petitioners had received the letter of the Special Deputy Collector (Land Acquisition) dated 19.04.2014.

With a view to give the appellant-writ petitioners an opportunity to rebut these factual assertions in the counter-affidavit, by filing a reply affidavit in support of their claim that they did not receive the said notice, we consider it appropriate to set aside the order under appeal, and restore the writ petitions to file. It is open to the appellant-writ petitioners to file their reply affidavit, and then request the Learned Single Judge to take up the Writ Petitions for admission and hearing. We make it clear that, since there is no interim order in force in the Writ Petitions, our order shall not be understood as having interfered with the interim order passed, in the appeals preferred before this Court, by the State Government under Section 54 of the Act.

All the questions raised in the writ petitions are left open to the considered by the Learned Single Judge. Both the Writ Appeals are disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

29th November, 2017
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
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Date: 29.11.2017

